



City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101

# Development Permit/ Environmental Determination Appeal Application

FORM  
DS-3031

November 2017

In order to assure your appeal application is successfully accepted and processed, you must read and understand [Information Bulletin 505](#), "Development Permits/Environmental Determination Appeal Procedure."

1. Type of Appeal: ☒ Appeal of the Project  
☐ Appeal of the Environmental Determination

2. Appellant: Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person"  
(Per M.C. Sec. 113.0103)

Name: Sue Turner, Secretary, Save the Field E-mail: SaveTheFieldDM@gmail.com  
Address: 2108 N St. #N City: Sacramento State: CA Zip Code: 95816 Telephone: (858) 621-3351

3. Project Name:  
Del Mar Heights Elementary School Rebuild. Process Four Decision PTS 666025

4. Project Information  
Permit/Environmental Determination & Permit/Document No.: Permits Under PTS 666025 Date of Decision/Determination: October 21, 2021 City Project Manager: Catherine Rom

Decision(Describe the permit/approval decision):  
Coastal Development Permit No. 2440630, Conditional Use Permit No. 2483264, Site Development Permit No. 2483265, and Planned Development Permit No. 2570884 for the reconstruction of an existing elementary school located at 13555 Boquita Drive within the Torrey Pines Community Plan area.

5. Ground for Appeal(Please check all that apply):  
☒ Factual Error ☒ New Information  
☒ Conflict with other matters ☒ City-wide Significance (Process Four decisions only)  
☒ Findings Not Supported

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in [Chapter 11, Article 2, Division 5 of the San Diego Municipal Code](#). Attach additional sheets if necessary.)

Please see attached letter.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Sue Turner Date: 11/3/2021

Note: Faxed appeals are not accepted.

## Description of Grounds for Appeal

PTS 666025

Please accept our appeal of PTS 666025, Coastal Development Permit No. 2440630, Conditional Use Permit No. 2483264, Site Development Permit No. 2483265, and Planned Development Permit No. 2570884 for the reconstruction of an existing elementary school located at 13555 Boquita Drive within the Torrey Pines Community Plan area.

As more particularly described in our letter to the Planning Commission dated October 18, 2021, attached hereto as **Exhibit A**, we file this appeal on the grounds that: (1) Findings Are Not Supported—The decision maker’s stated findings to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; and (2) Conflicts—The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a land use plan, a City Council policy, or the Municipal Code. We respectfully request this item be brought to City Council for a hearing.

### Findings Not Supported:

The Coastal Development Permits cannot be made as the project does not enhance or protect public views. Additionally, the findings cannot be made that the project will not be detrimental to the public health, safety and welfare because the project proposes limited fire setbacks and does not provide an evacuation analysis to evaluate the impact of the project on public health and safety.

### Conflicts with Land Use Plan:

The Project is not in conformity with the Community Plan and the Certified Local Coastal program. For example, the District fails to recognize the Project’s inconsistency with the Community Plan goal to “provide adequate park and recreation facilities” by securing joint use agreements with the elementary schools. The Project’s significant reduction in outdoor recreation space is in direct opposition to this goal.

# EXHIBIT A



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DEL MAR HEIGHTS  
LAS VEGAS  
ORANGE COUNTY  
PHOENIX  
SAN DIEGO  
SILICON VALLEY

October 18, 2021

City of San Diego Planning Commission  
1222 First Avenue  
San Diego, CA 92101

Re: Del Mar Heights School Rebuild – Project No 666025  
October 21, 2021 Planning Commission Agenda Item -2

Dear Chairperson Hoffman and Members of the Planning Commission:

This firm represents Save the Field, a California nonprofit public benefit corporation comprising numerous neighbors and citizens in connection with their concerns regarding the Del Mar Heights School Rebuild Project (the “Project”). Save the Field supports modernization of the Del Mar Heights School, with the majority of Save the Field members voting to approve Measure MM to fund improvements to the school. However, the District’s proposed Project—a complete tear-down and rebuild of the existing school—results in significant impacts to the adjacent Torrey Pines Preserve, disrupts environmentally sensitive lands, and increases wildfire evacuation risks. While the District’s minimization tactic to date has been to dismiss Save the Field’s concerns as frivolous issues pertaining to private views, the issues of concern are quite serious and are magnified by the District’s consistent pattern of circumventing the public process at every turn.<sup>1</sup>

In short, and as discussed in more detail below, there are a number of reasons the City cannot approve the Project today, including:

- (1) As the Responsible Agency for this Project, the City must fulfill its obligations under CEQA by independently evaluating the integrity of the District’s CEQA document and exercise its own discretion in judging whether the Project’s likely environmental impacts are significant or otherwise acceptable in light of the Project’s community benefits. However, the District CEQA

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<sup>1</sup> Notably, the District originally declined to seek the required discretionary permits from the City of San Diego and only conceded it was required to do so after Save the Field obtained written confirmation from both the City of San Diego and the Coastal Commission that the discretionary approvals from the City of San Diego were required for the Project.

documents are woefully inadequate and violative of CEQA, and are currently the subject of ongoing litigation between Save the Field and the District.

- (2) As a result of the inadequacy of the District's CEQA documents, the City must assume the role of the Lead Agency and prepare its own independent environmental review of the Project before considering approval of the Permits for the Project.
- (3) The City cannot make the necessary legal findings to approve the Permits for the Project based on the evidence existing in the administrative record.
- (4) The District failed to obtain a recommendation from the applicable community planning group under false and/or misleading pretenses.

We believe there are only three prudent options for the Planning Commission's consideration today:

- (1) Refrain from making on decision on the Project until after the ongoing litigation between Save the Field and the District is fully resolved;
- (2) Remand the Project back to City Staff to assume the Lead Agency role and perform an independent environmental review of the Project in conformance with CEQA; or
- (3) Deny the Project as currently proposed.

## **I. Project Background**

Del Mar Heights Elementary School (the "School"), located at 13555 Boquita Drive in San Diego and is comprised of a number of detached buildings, a parking lot, and other incidental improvements located on the northern portion of the 10.5-acre site (the "Site"). The remainder of the Site consists of a grassy playfield and two baseball/softball fields. The majority of the School is directly adjacent to the Torrey Pines State Reserve Extension (the "Torrey Pines State Reserve").

In 2018, the District presented Proposition 39 Measure MM to voters, authorizing \$186,000,000 in bond funding for improvements to the District's schools. The Project plans to use \$56,000,000 of the bond funds to rebuild Del Mar Heights, which currently has a student enrollment of 459 students.<sup>2</sup>

The Project is proposing to demolish the existing 52,406-square foot of existing structures and replace it with 66,823 square feet of new construction, which will expand the School's footprint over the entire width of the site. The Project will entirely redesign the campus and will significantly increase the size of the School's parking lot which is now designed to stretch the entire width of the campus. This significant expansion of the school comes at the cost of the environmentally essential, carbon sequestering, grassy playfields, which will be significantly reduced as a result of the District's proposal.

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<sup>2</sup> This enrollment figure is based on numbers from the 2019-2020 school year.

## **II. Project Status and Pending Litigation**

### **a. District Project Approval and Original MND**

As a school district governed by the state education code, the District serves as its own “Lead Agency” for the purposes of CEQA compliance and reviews and approves its own projects, except where approvals from other public agencies are required. Initially, the District took the position that it was not required seek the required discretionary permits from the City of San Diego in connection with the Project. It prepared a MND which entirely omitted any discussion of the City’s jurisdiction and role in the Project as well as omitted any discussion of the Site’s location within the Coastal Overlay Zone (“Draft MND”). In response to Save the Field’s comment letter on the Draft MND, as well as concurrence from the City and Coastal Commission, the District finally conceded it was required to obtain approvals from the City of San Diego, including a Coastal Development Permit, a Planned Development Permit, a Site Development Permit and a Conditional Use Permit (the “Permits”).

In connection with its initial environmental review, the District initially conducted an Initial Study and declared that the Project’s potential impacts to the environment could be mitigated down to a level below significance with a few minor mitigation measures. This resulted in the District’s approval the Project which included the MND (“Original MND”), a document which so omitted a full and thorough appreciation for how the Project might potentially impact coastal resources and the sensitive habitats of the Torrey Pines State Reserve (as well as other impacts) that a Superior Court judge vacated and decertified the entire MND in December 2020. The Court Order states:

A writ of mandate will issue vacating the Mitigated Negative Declaration for the Del Mar Heights School Rebuild Project, the vacating Respondent’s approval of the Del Mar Heights School Rebuild Project, and suspending any and all activity pursuant to Respondent’s approval of the Rebuild Project until Respondent has fully complied with all requirements of the California Environmental Quality Act (“CEQA”). Pub. Resources Code 21168.9.<sup>3</sup>

### **b. District’s Focused EIR Which is the Subject of a Pending Judicial Appeal**

Following the issuance of the Superior Court’s writ, instead of conducting a full environmental impact report, as required by CEQA, the District prepared a focused EIR which analyzes only two of the eighteen impact categories which CEQA requires legitimate environmental analyses to discuss (the “Focused EIR”). A focused EIR, however, is not a stand-alone environmental document under CEQA.<sup>4</sup> It is a streamlining tool which may be used to tier-off of previously prepared and certified Environmental Impact Reports. The District is well-aware of this fact, which is why it appears to have concurrently re-

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<sup>3</sup> Please see **Exhibit 1** for the Court Order.

<sup>4</sup> CEQA Guidelines Article 11, entitled Types of EIRs, does not include Focused EIRs because the Guidelines only contemplate the use of Focused EIR in the context of streamlining environmental review of projects generally considered by first-tier Master or Program EIRs, which are discussed in CEQA Guidelines Sections 15175-15179.5. Discussion of Focused EIRs is contained in CEQA Guideline Section 15179.5, a very narrow guidelines that explicitly lays out a process for subsequent tiered review of projects contemplated by previously-certified EIRs.



certified the previously vacated MND as part of its approval of the Focused EIR, such that the Focused EIR is effectively “tiering off-of” a previously vacated MND.<sup>5</sup> Not only is this approach violative of the Court’s order in the Writ Litigation, it is a clear and unequivocal violation of CEQA and illustrative of yet another attempt to short-circuit the environmental review process. The District is now ostensibly relying on the concurrently certified Focused EIR and MND as the means to meet its requirements as the Lead Agency under CEQA. This is troublesome for the reasons detailed below.

First, when the Superior Court ordered the District to vacate the MND, the District redesigned aspects of the Project and then analyzed the potential impacts of the redesigned project in the focused EIR. As a result of the redesign, the focused EIR still neglects to analyze many clear and significant impacts of the unchanged portions of the Project as well as fails to analyze new environmental impacts resulting from the now-redesigned Project. Remarkably, and in defiance of the Court order, the focused EIR still fails to adequately analyze the risks of significant impact on noise, traffic, and biological resources.

Given that the CEQA overwhelming favors public disclosure and requires a full EIR, which cannot be fulfilled by a focused EIR, Save the Field has appealed the Superior Court’s decision to accept the District’s focused EIR to dissolve its writ of mandate on the District. That appeal is now pending before the Fourth District Court of Appeals and is expected to be decided in March of 2022. Specifically, the appeal with the Fourth Appellate District (1) challenges the adequacy of the District’s focused EIR under CEQA, (2) appeals the Court’s decision to accept the same in satisfaction of the Writ, and (3) reprises the call for a full environmental impact report.

This appeal may result in the focused EIR’s decertification, strict vacation of all project approvals issued by the City of San Diego with respect to the Project in reliance on the focused EIR, and judicial orders to suspend project activities until the District conducts a full environmental impact report required under CEQA.

### **III. City of San Diego Role as Responsible Agency in the District’s Project**

Notwithstanding the District’s many errors throughout this environmental review process, the City of San Diego is at risk of becoming complicit in the District’s CEQA violations if the Project is approved. Under the present circumstances, the City’s role within this Project’s environmental review process is that of a Responsible Agency. This means that the City itself legally required to comply with CEQA, even if the District, as Lead Agency, fails to do so. It is legally required to ensure that the District, the Lead Agency, complies with CEQA. Practically, the City’s role is here is to oversee the District’s environmental analysis and verify that the District’s environmental analysis meet the same standards that the City would employ if it were the Lead Agency evaluating this Project.<sup>6</sup>

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<sup>5</sup> Board Resolution 2021-11 included as **Exhibit 2**.

<sup>6</sup> CEQA Guidelines § 15002(i) provides that CEQA applies to all discretionary actions carried out by public agencies, regardless whether those public agencies occupy the role of Lead Agency or Responsible Agency. CEQA Guidelines § 15381 provides that the term “Responsible Agency” includes all public agencies other than the lead agency which have discretionary approval power over the project.”

**a. As a Responsible Agency, the City of San Diego Must Comply with Section 15096 of the CEQA Guidelines.**

A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved.<sup>7</sup> If a Responsible Agency believes that the final EIR or Negative Declaration prepared by the Lead Agency is not adequate for use by the Responsible Agency, the Responsible Agency must either:

- (1) Take the issue to court within 30 days after the Lead Agency files a Notice of Determination;
- (2) Be deemed to have waived any objection to the adequacy of the EIR or Negative Declaration;
- (3) Prepare a subsequent EIR if permissible under Section 15162; or
- (4) Assume the Lead Agency role as provided in Section 15052(a)(3).<sup>8</sup>

Prior to reaching a decision on the project, the Responsible Agency must consider the environmental effects of the project as shown in the EIR or Negative Declaration, keeping in mind that a subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163. In other words, if the Responsible Agency is not permitted to prepare a subsequent or supplemental EIR because the conditions of Sections 15162 or 15163 are not triggered, and, the Responsible Agency has independently concluded that the final EIR or Negative Declaration prepared by the Lead Agency is not adequate for use by the Responsible Agency, then the Responsible Agency must act in accordance with one of the above four options set forth in Section 15096(e). If it fails to voice concerns about the adequacy of the Lead Agency's final EIR or Negative Declaration and decides to approve the Project, the Responsible Agency will have waived its objections to the Lead Agency's environmental conclusions, which waiver and which decision to approve would subject the Responsible Agency to liability in violation of CEQA.

As the Responsible Agency for this Project, the City must fulfill its obligations under CEQA by independently evaluating the integrity of the review as represented in the District's CEQA document, and ultimately exercise its own discretion in judging whether the Project's likely environmental impacts are significant or otherwise acceptable in light of the Project's community benefits.<sup>9</sup> In its capacity as Responsible Agency, a decision-making role under the statutory framework, the City must thoroughly review the focused EIR, consider what it reveals as well as the common sense questions it leaves unanswered relative to the Project's impacts on critical coastal and state reserve resources, discuss the focused EIRs strengths and deficiencies with the District, and weigh whether it finds the focused

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<sup>7</sup> CEQA Guidelines 15096(a).

<sup>8</sup> CEQA Guidelines 15096(e).

<sup>9</sup> Pub. Res. Code § 21069; CEQA Guidelines § 15096, subd. (a) ["A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved" (emphasis added)]; § 15096, subd. (d) ["A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include"].



EIR's findings and methodology acceptable in light of the circumstances or—instead—wishes to investigate the Project's impacts to the area further.<sup>10</sup>

**b. The City's Environmental Determination Must Be Supported By CEQA Findings Which Cannot Be Made Given the Evidence In the Record.**

Similar to lead agencies, responsible agencies must adopt certain legal findings. For Negative or Mitigated Negative Declarations, the *Responsible Agency must find that no substantial evidence supports a fair argument that the project may result in significant impacts*. For EIRs, *Responsible Agencies must find—in writing—that no feasible alternatives or mitigation measures are available to reduce or avoid significant unavoidable impacts within the Responsible Agency's jurisdiction*, and in so finding, the Responsible Agencies may also impose additional mitigation measures that were not identified during review by the Lead Agency.<sup>11</sup>

The City has not and cannot make the findings required by CEQA Guidelines Section 15096(h). The City's proposed Resolution for this hearing does not reference these required findings—it merely refer inappositely to the findings required for tiering a focused EIR from a pre-existing and still valid CEQA document,<sup>12</sup> which are not the findings required of Responsible Agencies and, in any case, are not supported by evidence.

Furthermore, to underscore the City's misunderstanding of the legal situation at hand, the both the City's proposed Resolution and the Report to the Planning Commission refer to both MND and the Focused EIR as the CEQA documents which would support its decision to approve the Permits. The proposed Resolution refers to the MND as the original MND certified and approved by the District on May 12, 2020, without reference to the fact that that MND was vacated by the Superior Court's December 2020 Ruling and March 26, 2021 Writ and then somehow resurrected by the District on June 30, 2021 approval.<sup>13</sup>

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<sup>10</sup> If the City disagreed with the District's conclusions or determined the District's focused EIR to be incomplete or inadequate given the sensitivity of the Site, CEQA Guidelines Section 15096(e)(4) authorizes the City—as Responsible Agency—to assume the District's role of Lead Agency and conduct whatever environmental investigation the City deems necessary to support the discretionary decisions which the City is being asked make in relative to this Project and for which the City would be liable under CEQA for making with insufficient consideration of environmental impacts. We stress that this application for a Coastal Development Permit and Site Development Permit constitute discretionary decisions for the purposes of CEQA compliance.

<sup>11</sup> CEQA Guidelines §§ 15096(h), 15091; *RiverWatch v. Olivenhain Municipal Water District*, 170 Cal.App.4th 1186, 1202 (2009); and see *Santa Clara Valley Water District v. San Francisco Bay Regional Water Quality Control Board*, No. A157127, 2020 WL 7706795 (Cal. Ct. App. Dec. 29, 2020).

<sup>12</sup> The findings required for tiering a Focused EIR from a pre-existing and still valid CEQA documents are those set forth in CEQA Guideline Section 15162, relative to substantial changes in the project, circumstances, and/or availability of information. We note that the City is not required and indeed not allowed to make these findings in the present case because (a) these findings must be made by the Lead Agency, and the City is the Responsible Agency for the Project, (b) and the District's redesign of the Project constitute substantial changes necessitating some kind of full EIR, and (c) the Superior Court's decertification of the MND precludes the MND from being a legitimate base from which a Focused EIR could tier.

<sup>13</sup> On June 30, 2021, the District's board adopted Resolution No. 2021-11, which reinstated the MND which the Superior Court had unequivocally vacated by its March 26, 2021 Writ of Mandate against the District.

**c. The City Has No Reliable Information about the Project's Impacts to The Other Sixteen Categories Which the Focused EIR Fails to Discuss so It Must Assume the Lead Agency Role under CEQA.**

*i. The District's Focused EIR which purports to Incorporate the Invalidated MND is Improper Under CEQA*

Notwithstanding the clear order of the Superior Court last December vacating and decertifying the MND, on June 30, 2021 the District's Board unilaterally voted to approved Resolution 2021-11, which certified the Final Focused EIR and re-certified the previously-vacated MND. That Resolution also adopted Findings of Fact and the Mitigation, Monitoring and Reporting Program ("MMRP") from the previously-vacated MND.

This is wholly impermissible under CEQA. There is no mechanism in CEQA to concurrently certify two different environmental documents for the same project. CEQA requires that a project's environmental analysis proceed by way of a mitigated negative declaration or an environmental impact report. If an environmental impact report was deemed necessary, it must be the case that a mitigated negative declaration was determined insufficient for the type and significance of the environmental impacts posed by the project. In other words, the CEQA requires one or the other and precludes the possibility of both existing concurrently.<sup>14</sup>

Another example reflecting the District's attempt to resurrect the MMRP sections of the decertified MND is evident in Condition of Approval number 13, which requires as one of the conditions of approving the requested Permits that "the Owner/Permittee shall comply with the MMRP as specified in the MITIGATED NEGATIVE DECLARATION and FOCUSED ENVIRONMENTAL IMPACT REPORT SCH NO. 2020029070, to the satisfaction of the Development Services Department and the City Engineer." Once again, it is impossible under CEQA for both the re-certified MND and the Focused EIR to concurrently govern the Project.

*ii. The District's Focused EIR Fails to Analyze Numerous Impact Categories*

The District claims the Focused EIR has been prepared as a Project EIR pursuant to Section 15161 of the CEQA Guidelines. However, instead of evaluating "the changes in the environment that would result from the development project" as required by Section 15161, the Focused EIR limits the review of only impacts to biological resources and construction noise without any analysis of the other categories of environmental impacts resulting from the Project.

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<sup>14</sup> CEQA Guidelines Section 15073(d) ["If during the negative declaration process there is substantial evidence in light of the whole record, before the Lead Agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the Lead Agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project]; see also Public Resources Code Sections 21083 and 21080; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

The MND, which has been vacated and decertified by the Court, required an initial study and of potential impacts and provided mitigation measures for impacts related to cultural resources, geology and soils. While the MND analyzed 21 categories of environmental impacts,<sup>15</sup> the MND's analysis and discussion of these impacts are moot because the MND was vacated in its entirety by the Superior Court's March 26, 2021 Writ of Mandate, and the Court's vacation of the MND invalidated each and every one of the discussions contained within it. The MND cannot be resurrected by the District, nor can its impact discussions be incorporated retroactively into the subsequently-prepared Focused EIR.

The same logic applies to the mitigation measures encoded in the MND. When the Court vacated the MND, those mitigation measures which were identified therein were lost. They may not now be resurrected and belatedly incorporated into the Focused EIR.

One of Save the Field's the chief arguments on appeal is that once the Court vacated the MND, it should have clearly ordered the District to prepare a full EIR, which would have forced the District to reconduct an initial study, revisit and fully analyze each of the required impact categories, and determine whether and how to mitigate significant impacts through apt mitigation measures. Instead, Save the Field believes that the Court erred in giving the District the option of preparing the Focused EIR, which—on account of its “focused” nature—does not even mention 18 impact categories and instead focuses on only two impact categories, which deprives of the public of meaningful understanding of those issues—especially in the context of the now redesigned Project—and again manifests the District's attempt to short-circuit the public disclosure process.

Finally, we note that the since invalidated MND's discussion of the 18 other impact categories cannot legally suffice for public disclosure purposes at the present juncture because the MND studied impacts from the vantage point of a project which has since been redesigned. In other words, the MND's impact discussion is moot for the additional reason that the “project” it contemplated was different from the Project now before us.

*iii. The District's Focused EIR Is Based on Projected Enrollment Rather than Student Capacity*

The District's Focused EIR contains incorrect student enrollment assumptions which results in significant disruptions to the impact analysis contained therein. For example, the District's Facility Master Plan (“FMP”) indicates that the Del Mar Heights School project is to construct a “a new 500-student campus site.”<sup>16</sup> However, in Section 3.3.1 Description of Project under “Student Capacity” we find that the FMP indicates Del Mar Heights School as having a current capacity of 529 students and the proposed school has a capacity of 507 students as seen in the charts below, both over the vision of 500 students. Moreover, as noted by Play Outside Del Mar in its comments to the Original MND, the

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<sup>15</sup> The MND analyzed aesthetics, agriculture and forestry resources, air quality, biological resources, cultural resources, energy, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation, tribal and cultural resources, utilities and service systems, wildfire, and mandatory findings of significance.

<sup>16</sup> FIER Page 3-3.

District's construction plans on file with the Division of State Architect states that the ***student capacity of the Project is 673 students.***

This Focused EIR assumes that its student enrollment will never exceed 22 students per classroom but the Project is physically designed to be able to accommodate many more students. Under CEQA, the Focused EIR must consider the "worst-case" scenario in its analysis which, in this case, is 673 students, more than 25% greater than originally studied. As a result, the environmental analysis must be re-done using the correct student capacity assumptions in order to accurately determine whether the Project will have significant GHG, Transportation, Fire and other impacts that must be mitigated.

*iv. The District's Focused EIR Fails to Analyze Fire Impacts*

Given that the Focused EIR has only analyzed two potential impacts, the Project has glaring omissions and unanalyzed dangers. For instance, the proximity to the Torrey Pines State Reserve and the Site's location in a Very High Severity Fire zone, the very real possibility of fire access and evacuation must be sufficiently analyzed and to date has not even been considered.

A Preliminary Fire Protection Analysis Report dated August 16, 2020 authored by J. Charles Weber, a fire and life safety consultant concluded that there "there are serious deficiencies in the proposed building configurations and mitigations related to CEQA Significant Impacts related to wild fire safety as required for new projects and residential developments." He states it is "unknown if the process of evacuating of students from the school during a wildfire event has been analyzed" and that "*The existing evacuation route for the school and surrounding residential neighborhood does not allow for an effective simultaneous evacuation and ingress of emergency vehicles due to narrow, congested streets*" and further that "*Inadequate emergency access is a Significant Adverse Impact/Effect according to Appendix G, XVI Transportation/Traffic of the California Environmental Quality Act (CEQA) and must be mitigated in the Project planning documents and process.*" This issue was not evaluated at all in the environmental review. Please see **Exhibit 3** for the Preliminary Fire Protection Analysis Report.

A second study prepared by Mel Johnson of FireWise 2000 dated August 17, 2020 indicates that "Wildland Fire could significantly impact the project from the west and the south" and that "evacuation is a major concern as the existing road network is inadequate for ingress and egress during an emergency. Wildland fire could spread rapidly across the adjoining State Reserve lands and impact the school and its occupants." Please see **Exhibit 4** for the FireWise 2000 report.

*v. Although Not Disclosed in the Focused EIR, the District Acknowledged Traffic Concerns and Requested the City to Make Improvements*

As noted above, the Focused EIR does not analyze or disclose the Project's impact to transportation. However, in March 2019, the Superintendent of the District sent a letter then Councilmember Barbara Bry acknowledging that they have received "substantial public input from the local community regarding vehicular traffic on Del Mar Heights Road west of Interstate 5 and its negative effect on the safety of drivers, pedestrians and bicyclists including DMUSD students, parents and employees." A copy of the District's letter is attached as **Exhibit 5**.

Rather than analyze these impacts and incorporate adequate mitigation measures to offset the additional impacts from the Project, the District requested that “the City of San Diego place a very high priority on conducting the necessary studies and analysis and implementing traffic calming measures which will improve safety of the drivers, pedestrians and bicyclists on or near Del Mar Heights Road west of Interstate 5.” Further, it “anticipate[s] that the results of a traffic study and related traffic calming **will materially improve safety for driving, walking and biking** at the Districts’ two schools with access off Del Mar Heights Road west of Interstate 5: Del Mar Heights School located at 13555 Boquita Drive; and Del Mar Hills Academy located at 14085 Mango Drive”.

Given that the District believes, as it has stated publicly on record, that a traffic study and related traffic calming will *materially* improve safety, it is shocking and hypocritical that it would request the City to study and make these improvements while refusing to do the same in the implementation of an expansion of its school, especially given that this correspondence occurred in 2019 when the District was actively pursuing the Project and preparing the Original MND.

#### **IV. The Findings Required by the San Diego Municipal Code for Approval of the Requested Permits Cannot be Made.**

The Project requires approval of a Coastal Development Permit, Site Development Permit, Planned Development Permit and Conditional Use Permit, which require the City to make certain legal findings supported by substantial evidence in the record.

##### **a. The Coastal Development Permit**

Before approving a CDP, the San Diego Municipal Code (“SDMC”) requires that the following findings be made<sup>17</sup>:

- (1) The proposed *coastal development*<sup>[18]</sup> will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway

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<sup>17</sup> SDMC, § 126.0708(a).

<sup>18</sup> “*Coastal development* means ‘development’ as defined in the California Coastal Act of 1976, Section 30106 in the Coastal Overlay Zone, which states ‘development’ means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes and kelp harvesting. As used in this section, ‘structure’ includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.” (SDMC, § 113.0103.)



identified in a *Local Coastal Program*<sup>[19]</sup> *land use plan*<sup>[20]</sup>; and the proposed *coastal development* will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the *Local Coastal Program land use plan*;

- (2) The proposed *coastal development* will not adversely affect *environmentally sensitive lands*<sup>[21]</sup>; and
- (3) The proposed *coastal development* is in conformity with the certified *Local Coastal Program land use plan* and complies with all regulations of the certified Implementation Program.

*i. Project Does Not Enhance or Protect Public Views*

In order to comply with the City's CDP and LCP requirements, the Project must enhance and protect public views to and along the ocean and to other scenic areas identified in the LCP. The Community Plan states,

The State Coastal Act states that ***scenic and visual qualities of the coastal areas shall be considered and protected as a resource of public importance***. The Torrey Pines community planning area possesses many highly scenic open space areas and dramatic vistas. Torrey Pines also has a number of road segments that have scenic qualities worthy of formal recognition and protection.<sup>22</sup>

The Community Plan identifies that "[s]ignificant scenic resource areas" include the Torrey Pines State Reserve Extension," and that future development adjacent to the Torrey Pines State Reserve Extension shall provide adequate buffer areas and setbacks to avoid significant visual impacts. (*Ibid.*) However, there is not evidence in the record that the Project enhances and protects public views. The Project will greatly expand the footprint of the existing campus across the entirety of the Site, which will result in the construction of new buildings closer to the edge of the Reserve, diminishing public views to the ocean and to the Reserve from the surrounding areas.

*ii. Project will have adverse impacts on adjacent environmentally sensitive lands*

The Community Plan identifies that "[s]ignificant scenic resource areas" include the Torrey Pines State Reserve Extension," and that future development adjacent to the Torrey Pines State

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<sup>19</sup> "Local Coastal Program has the same meaning as stated in the California Coastal Act of 1976, Section 30108.6, which states: 'Local Coastal Program means a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resource areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level.'" (*Ibid.*)

<sup>20</sup> "Land use plans means the General Plan and adopted community plans, specific plans, precise plans, and sub-area plans."

<sup>21</sup> "Environmentally sensitive lands means land containing steep hillsides, sensitive biological resources, coastal beaches, sensitive coastal bluffs, or Special Flood Hazard Areas." (*Ibid.*)

<sup>22</sup> Community Plan at 118.

Reserve Extension shall provide adequate buffer areas and setbacks to avoid significant visual impacts. (*Ibid.*) There is no substantial evidence in the record that the Project provides an adequate buffer to preserve the scenic and visual qualities of the Reserve. The Project will greatly expand the footprint of the existing campus across the entirety of the property, which will result in the construction of new buildings closer to the edge of the Reserve.

*iii. The Project is Not in Conformity with Certified Local Coastal Plan*

In addition, the Project is not in conformity with many other provisions in the Community Plan and is thus not in conformity with the City's Certified Local Coastal Plan ("LCP"). Critically, the District's Focused EIR omitted analysis of the Project's consistency with the City of San Diego General Plan or the Torrey Pines Community Plan. The District's post-hoc analysis of the Project's conformity with the Torrey Pines Community Plan, which was first analyzed in response to comments on the District's inadequate MND, noticeably omits many of the obvious inconsistencies with the plan. The District only purports to analyze the Project's consistency with the "key policies" and fails to address how the Project is consistent with parks and recreation and development near the Reserve.

For example, the District fails to recognize the Project's inconsistency with the Community Plan goal to "provide adequate park and recreation facilities" by securing joint use agreements with the elementary schools.<sup>23</sup> The Project's significant reduction in outdoor recreation space is in direct opposition to this goal.

The Project proposes to reduce the size of the open/community accessible area by 61,340 square feet. The District's MND fails to consider the impact of this significant reduction in open space, especially since the community is already significantly lacking open park space. The City's General Plan, Recreational Element, establishes a population-based park requirement of 2.40 usable acres per 1,000 population. As set forth in the Torrey Pines Community Plan, the potential buildout population of the community area is 7,000 and would require 16.80 usable acres of park space. The only park identified in the Torrey Pines community plan area is the Crest Canyon Neighborhood Park, which has approximately 1.5 acres of usable park area. Thus, the Torrey Pines community planning area is 15.30 acres short of its requirements.<sup>24</sup>

The Torrey Pines Community Plan recognizes the need for additional park space and has expressly indicated a possible joint use of the Del Mar Heights Elementary School to help fulfill its shortfall. Instead of helping the existing shortage of parks, the Project will diminish the availability of usable park area even further by reducing the existing grassy field available to the public by at least 41,643 square feet (.96 acres). There is a likely possibility that the reduction of usable recreation area from the school site will generate a demand for park space and would cause increased use of other existing (and limited) park facilities within the Torrey Pines community plan area and therefore cause a significant impact on the environment.

The Community Plan recognizes that the area of Torrey Pines located south of Carmel Valley Road "is heavily influenced by Torrey Pines State Reserve and Los Peñasquitos Canyon Preserve and

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<sup>23</sup> Community Plan at 94-95.

<sup>24</sup> Community Plan at 89.

Lagoon. ***Most of this portion of the community is designated open space to protect the lagoon and resources within Torrey Pines State Park Reserve Extension.***” (Community Plan at 17 [Emphasis added].) The Community Plan requires that “[n]ew development adjacent to and impacting biologically sensitive areas shall be responsible for the restoration and enhancement of that area.” (*Id.* at 27.) Despite the Project’s impacts on the Reserve, the District refuses to fully study and commit to mitigating these impacts, thereby not acting in conformity with the Community Plan.

Finally, the Focused EIR states that Torrey pines trees are considered ornamental vegetation, suggesting that these trees may not be preserved by the District, despite the express provisions in the Community Plan which state “[a]ll Torrey Pine trees on public property should be preserved and protected.”<sup>25</sup>

The Project is not in conformity with the City’s LCP and the Planning Commission should not recommend the issuance of a Coastal Development Permit.

#### **b. Conditional Use Permit and Planned Development Permit**

##### **i. Proposed development not adversely affect applicable land use plan, the LCP**

As discussed above, with reference to why the CDP should be denied, the Proposed Project will violate the Torrey Pines Community Plan and Local Coastal Plan, which is the applicable land use plan for this Site. The vision of the Torrey Pines Community Plan is to “provide, in a democratic manner, the highest possible quality of life for residents and businesses while preserving the community’s unique natural environment.”<sup>26</sup> The significant reduction of open space and the lack of a shared use provision does not provide the highest quality of life for residents. Further, Key Policy 10 states that “Useable public parks and active playing fields should be provided within the planning area for use by all age groups.”<sup>27</sup> The reduction of field space and the lack of a shared use agreement with the community is in direct conflict with this Community Plan policy.

Additionally, the Torrey Pines Community Plan Key Policies states that “All development adjacent to open space areas shall be designed to reduce visual and development impacts.”<sup>28</sup> The Planning Commission cannot make this conclusion that the development has been designed to reduce development impacts because the development impacts have not been evaluated.

There are also specific policies and goals related to the sensitive nature of the Torrey Pines State Reserve Extension. Specifically, that “future development adjacent to the Torrey Pines Reserve Extension area shall provide for adequate buffer areas. Development proposals shall provide adequate setbacks to avoid significant erosion, visual, or sediment impacts from construction. Setbacks also shall be provided to prevent the necessity of firebreaks being constructed on reserve

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<sup>25</sup> Community Plan at 29.

<sup>26</sup> Community Plan at 3.

<sup>27</sup> Community Plan at 4.

<sup>28</sup> Community Plan at 3.

property.”<sup>29</sup> As will be discussed in the section below, the project has not provided adequate buffers or setbacks with regard to fire.

*ii. Proposed Project will be detrimental to public health, safety and welfare*

**1. Risk of Public Health and Safety Impact for Alternative Compliance for Brush Management**

The Torrey Pines Community Plan also provides guidance with regard to Brush Management stating that, “Because of the abundance of natural open space areas including canyons rich with native vegetation, special brush management consideration and enforcement should be provided within the Torrey Pines planning area”.<sup>30</sup> However, the Project instead proposes to include alternative compliance for an expanded, fully irrigated Brush Management Zone One condition measuring 43-feet with no Brush Management Zone Two. However, within the Coastal Zone, Zone Two may only be reduced by 30 feet, leaving a balance of 35 feet. The Project does not comply with this requirement and instead requests alternative compliance for the brush management zones.

While the Project Applicants claim this creates a safer fire break between the adjacent native vegetation of the Torrey Pines Reserve Extension and the buildings on site, there has been no evaluation to determine if this in fact correct given there is no environmental review of fire access or evacuation.

**2. Limited Fire Setbacks and Lack of Evacuation Analysis Impact on Public Health and Safety**

The unanalyzed impacts to public health, safety and welfare with regard to the increased risk of wildfire given the Project’s location next to the Reserve is astounding. As discussed in Section III(b)(i), the District’s current Focused EIR is silent on the necessary public disclosure that the Project does not comply with the 100-foot setback requirement required by law.

Addition, the Project fails to consider impacts to wildfire evacuation, which can have significant adverse impacts on first responders’ ability to respond to any wildfire at or near the Reserve, as discussed in detail in Section III(c)(iv) of this letter above.

**c. Site Development Permit**

In addition to the findings referenced above, the San Diego Municipal Code requires the decision-making body to support a decision to grant a Site Development Permit for project located in Environmentally Sensitive Lands with a finding that the site in question is physically suitable for the design and siting of the proposed development such the development will result in minimum disturbance to environmentally sensitive lands.

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<sup>29</sup> Community Plan at 32.

<sup>30</sup> Community Plan at 35.

Instead, this Project has neglected to evaluate Project impacts to the environmentally sensitive lands and has requested deviations to comply with critical brush management regulations. Given the environmental sensitivity and increased risk of wildfire given its proximity to the Reserve, the Site is not physically suitable for the design and siting of the Project.

#### **V. The District Failed to Obtain A Recommendation from The Torrey Pines Community Planning Group Under False Pretenses**

The District is appearing before the Planning Commission for a decision on their discretionary permit without having first requested a recommendation from the Torrey Pines Community Planning Group. By doing so, the District is depriving the immediate community of the opportunity to openly and meaningfully discuss the Project's potential impacts to the Torrey Pines community. The Torrey Pines Community Planning Group was not consulted to provide feedback, nor was it ever allowed to take a vote on the Project prior to it being docketed on the October 21, 2021 Planning Commission agenda.

The Site is located within the Torrey Pines Community Planning Board's boundaries. As such, and given that the Permits sought here today are subject to a Process 4-level approval, with ultimate decision-making authority vested in the Planning Commission level, the Torrey Pines Community Planning Board was supposed to have been afforded the opportunity to review and provide its recommendation regarding the Project to the Planning Commission prior to the latter convening to decide whether to approve the Project pursuant to Council Policy 600-24.

Further, Council Policy 600-24 indicates that "whenever possible, a formal Community Planning Group recommendation should be submitted no later than the end of the public review period offered by the environmental review process"<sup>31</sup> and that "substantive changes in projects subsequent to completion of the environmental review process *will merit* further evaluation by a community planning group."<sup>32</sup> This language makes clear that the Community Planning Group is to be afforded meaningful opportunity not only to participate in the environmental review process, but to evaluate and verify any changes to the substance or form of project-specific environmental analyses.

The District's conduct with respect to this Project ignores Council Policy 600-24 and appears to have been intentionally misleading to the City. While the District presented the Project to the Torrey Pines Community Planning Board as an informational item in June of 2020<sup>33</sup> and to the Board's Project Review Committee in August of 2020, it never obtained a recommendation from the Board with respect approval or denial of the Permits. Although the Subcommittee's discussion of the Project was robust, the meeting concluded without any decision. The item was scheduled to come back to the full Torrey Pines Community Planning Group meeting on August 13, 2020, but the Chair of the Planning Board announced at the Board meeting that the Board would not be discussing the matter on the advice of the Community Planner who advised the Board to get a recommendation on how to proceed from the City Attorney, due to ongoing litigation regarding the Project.<sup>34</sup> The litigation referenced at

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<sup>31</sup> Council Policy 600-24.

<sup>32</sup> Council Policy 600-24.

<sup>33</sup> An agenda and official minutes of this meeting may be found at the following address  
[https://www.sandiego.gov/sites/default/files/tpcpb\\_june\\_11\\_2020\\_approved\\_minutes.pdf](https://www.sandiego.gov/sites/default/files/tpcpb_june_11_2020_approved_minutes.pdf).

<sup>34</sup> [https://www.sandiego.gov/sites/default/files/tpcpb\\_august\\_13\\_2020\\_approved\\_minutes.pdf](https://www.sandiego.gov/sites/default/files/tpcpb_august_13_2020_approved_minutes.pdf)



that time was Save the Field's challenge to the District's environmental analysis prepared for the Project, then memorialized in a Mitigated Negative Declaration (the "MND").<sup>35</sup>

However, in December 2020, the Superior Court decertified the MND in the course of issuing a writ against the District, and ordered it to reconduct the Project's environmental review in accordance with CEQA (the "Writ Litigation"). Following the Writ Litigation and pursuant to the Court's order, the District prepared a new environmental document, the Focused EIR. Yet the District never resubmitted the Project to Torrey Pines Community Planning Group for a recommendation.

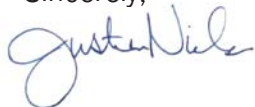
Perhaps most concerning, this critical fact—that the litigation cited by the District as the reason the Board didn't consider the Project was concluded in December 2020 and a new environmental document was prepared—does not appear to have been shared with the City and is not discussed in the Report to Planning Commission. Further, the District does not appear to have shared this information with the Torrey Pines Community Planning Board.

As a result, the full Planning Board still has never had the chance to hear, debate, or render an official recommendation on the Project. This is a critical piece of the public process which the District deliberately and improperly overstepped.

## VI. Conclusion

As a result of the District's repeatedly failure to follow the rules applicable to every other project in the City, the City of San Diego at significant risk of litigation exposure if it—as the "Responsible Agency" under CEQA—approves the Project in reliance on the District's procedurally incoherent, incomplete, and inaccurate environmental analysis of this Project under CEQA. Therefore, we urge the Planning Commission to either deny the Project as currently proposed or remand the Project back to City Staff to enable the City to assume the Lead Agency role and perform an independent environmental review of the Project in conformance with CEQA.

Sincerely,



Justine K. Nielsen

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<sup>35</sup> We note that the sequencing of environmental review and City permit process here is unusual. As noted above, the District's original position was that the Project did not require discretionary approval from the City of San Diego and, therefore, the District prepared and certified an MND for the Project prior to submitting and obtaining approval of the Permits from the City. This irregularity and omission was one of the bases of the Writ Litigation, which was successfully resolved in favor of Save the Field.